



A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Sunset Review

Department of Health Services—

Sunset Factors

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REPORT NO. 09-11



Debra K. Davenport
Auditor General

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STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

WILLIAM THOMSON
DEPUTY AUDITOR GENERAL

September 29, 2009

Members of the Arizona Legislature

The Honorable Janice K. Brewer, Governor

Will Humble, Interim Director
Department of Health Services

Transmitted herewith is a report of the Auditor General, A Sunset Review of the Department of Health Services (Department). This report is in response to an October 5, 2006, resolution of the Joint Legislative Audit Committee and was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq.

Included with this report is a written response from the Department.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on September 30, 2009.

Sincerely,

Debbie Davenport
Auditor General

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INTRODUCTION & BACKGROUND

The Office of the Auditor General has conducted a review of the Department of Health Services (Department) using the 12 criteria in Arizona's sunset law. The analysis of the 12 sunset factors was conducted pursuant to an October 5, 2006, resolution of the Joint Legislative Audit Committee and prepared as part of the sunset review set forth in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

This sunset review is the last in a series of three reports on the Department. The other two reports were performance audits on the Department's healthcare and child care facility licensing fees, and its substance abuse treatment programs.

Mission

The Department's mission is to set the standard for personal and community health through direct care delivery, science, public policy, and leadership. The Department is responsible for protecting and improving public health and for providing publicly funded behavioral health services. It fulfills these responsibilities through a variety of programs and services, including licensing and regulation of healthcare and child care facilities, mental health and substance abuse treatment, public health information and access to healthcare services, disease prevention and control, emergency medical services, public health statistics, and vital records.

Organization

The Department is divided into four divisions and includes various bureaus, offices, and programs within each division. The Department reported 2,391.8 authorized FTE (full-time equivalent) positions for fiscal year 2009, including 582.4 vacancies as of June 30, 2009.

Program divisions—The Department's four divisions are:

- **Administration (240 FTEs, 58.4 vacancies)**—Provides overall management and direction to the Department. It develops and administers policy; handles consumer complaints; coordinates and promotes health-related activities for consumer education; and supports relationships with the Legislature, community, and other health agencies. This division includes the Director's Office, and the Division of Operations consisting of audit, finance, human resources, information technology, procurement, and rules administration.
- **Division of Licensing Services (261.6 FTEs, 56.6 vacancies)**—Seeks to ensure public safety within healthcare and child care facilities through certification, inspection, licensure, complaint investigation, training, quality improvement, and enforcement activities. It licenses and regulates healthcare institutions such as assisted-living facilities, nursing homes, outpatient facilities, hospitals, hospices, home health agencies, and behavioral health facilities. The Division of Licensing Services also licenses and regulates child care facilities and group homes; parks and recreation programs; and school-based child care programs. Additionally, it licenses audiologists, speech pathologists, hearing aid dispensers, and midwives.
- **Division of Behavioral Health Services (1,135.2 FTEs, 238.7 vacancies)**—Coordinates, plans, administers, regulates, and monitors all facets of the publicly funded behavioral health system, including the Arizona State Hospital, through six major programs: administration, general mental health services, substance abuse services, services for persons with serious mental illness, child and adolescent services, and prevention services. It contracts with four Regional Behavioral Health Authorities (RBHAs) to administer behavioral health services throughout the State's six geographical service areas. The Division of Behavioral Health Services monitors the RBHAs' financial stability, works to ensure RBHAs' compliance with contract standards, and reviews medical records to identify areas where quality of service could be improved. In addition, it has Intergovernmental Agreements with five Arizona Indian Tribes to provide covered behavioral health services for American Indians on reservations. The Arizona State Hospital component of the Division of Behavioral Health Services provides inpatient treatment and rehabilitation services for Arizona's most severely mentally disabled citizens, including those referred by the judicial system.
- **Division of Public Health Services (755 FTEs, 228.7 vacancies)**—Seeks to protect and improve public health through prevention and control of disease and disability. Its public health prevention component includes a bureau for health systems development that provides access to healthcare programs and services, particularly for the uninsured and other vulnerable populations. It also includes a bureau for women's and children's health that provides programs

and services in areas such as teen pregnancy prevention, domestic violence, health information hotlines, and program evaluation. Its bureau for chronic disease prevention and control aims to reduce the impact of chronic diseases such as heart disease, diabetes, and arthritis. Additionally, its nutrition services include a food distribution program for pregnant women, children, and elderly people who meet income requirements.

The Division of Public Health Services' disease control component includes a bureau for epidemiology and disease control whose goal is to monitor, prevent, and control diseases such as tuberculosis, human immunodeficiency virus (HIV), and sexually transmitted diseases. It provides environmental health services in areas such as lead poisoning and indoor air quality. It is also responsible for immunization education and promotion, maintaining Arizona's immunization information system, and distributing vaccines such as those for an influenza pandemic. The disease control component includes a bureau for emergency preparedness and response that is responsible for ensuring that the State is prepared for public health emergencies such as bioterrorism and natural disasters such as flood and wildfires. It includes a bureau for emergency medical services that certifies emergency medical technicians (EMTs) and EMT training programs, and regulates ambulance services. In addition, the disease control component includes a bureau for state laboratory services that is responsible for identifying and investigating infectious and communicable diseases such as the West Nile virus and foodborne illness, analyzing substances such as drinking water for pollutants, and screening newborns for diseases. Finally, the Division of Public Health Services maintains public health statistics and vital records such as birth and death certificates.

Budget

The Department received total revenues of more than \$1.8 billion in fiscal year 2009, as shown in Table 1 (see page 4). More than \$1.2 billion of these revenues was received from other government agencies such as the U.S. Department of Health and Human Services and the U.S. Department of Agriculture. Additionally, the Department received monies appropriated from the State General Fund amounting to more than \$543 million. In February 2009, the Department's fiscal year 2009 budget was reduced by more than \$30 million. According to the Department, it reduced spending within its public health program on expenses such as vaccine purchases, and on healthcare for low-income Arizonans without health insurance, which is provided through contracts with community health centers. Additionally, it reduced spending for substance abuse treatment and other behavioral health services. Finally, the Department reduced its personnel expenses by implementing unpaid furloughs for all employees and eliminating more than 80 staff positions.

Table 1: Schedule of Revenues, Expenditures, and Other Financing Sources and Uses
Fiscal Years 2007 through 2009
(Unaudited)

	2007	2008	2009
Revenues:			
Intergovernmental	\$ 957,836,368	\$1,051,388,933	\$1,231,050,665
State General Fund appropriations	546,213,301	571,865,676	543,680,220
Tobacco sales taxes	28,417,408	26,084,544	23,405,280
Sales and charges for goods and services	13,897,607	15,774,213	13,391,437
Fines, forfeits, and penalties	9,904,282	10,401,458	10,171,096
License and permit fees	2,434,367	2,446,928	3,586,728
Other	2,770,516	3,284,049	2,721,036
Total revenues	<u>1,561,473,849</u>	<u>1,681,245,801</u>	<u>1,828,006,462</u>
Expenditures:¹			
Personal services and related benefits	122,398,724	132,678,481	126,252,361
Professional and outside services	43,889,880	34,040,740	29,345,225
Travel	1,800,046	1,496,542	1,387,787
Food	15,565	8,203	6,192
Aid to organizations	1,276,614,528	1,441,034,790	1,561,068,349
Other operating	56,109,626	55,958,022	52,211,961
Equipment	5,753,644	7,612,674	3,808,483
Total expenditures	<u>1,506,582,013</u>	<u>1,672,829,452</u>	<u>1,774,080,358</u>
Excess (deficiency) of revenues over expenditures	<u>54,891,836</u>	<u>8,146,349</u>	<u>53,926,104</u>
Other financing sources (uses):			
Net operating transfers out ²	(31,954,673)	(38,664,908)	(56,365,501)
Remittances to the State General Fund	(4,866,614)	(5,416,332)	(5,275,956)
Total other financing uses	<u>(36,821,287)</u>	<u>(44,081,240)</u>	<u>(61,641,457)</u>
Excess (deficiency) of revenues over expenditures and other financing uses	<u>\$ 18,070,549</u>	<u>\$ (35,664,891)</u>	<u>\$ (7,715,353)</u>

¹ Administrative adjustments are included in the fiscal year paid.

² Operating transfers out for 2007 included approximately \$28.5 million of Medicaid Disproportionate Share (DSH) monies that Laws 2006, Ch. 344, §3, appropriated to the Arizona State Hospital (Hospital), and that was later transferred to the State General Fund. The DSH monies were initially transferred from the Arizona Health Care Cost Containment System (AHCCCS) to the Hospital and then transferred to the State General Fund. Subsequent to 2007, the procedure changed, and these monies were not transferred to the Hospital, but rather were retained by the State General Fund when received. In addition, operating transfers out for 2008 and 2009 included \$32.3 million and \$52.8 million, respectively, that were transferred to the State General Fund as required by Laws 2008, Ch. 53, §2; Laws 2008, Ch. 285, §§24 and 47; Laws 2009, Ch. 11, §116; and Laws 2009, 1st S.S., Ch. 1, §§4, 5, and 7, and Ch. 4, §1.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2007 through 2009.

Scope and methodology

The Department's performance was analyzed in accordance with the 12 statutory sunset factors. Prior audit work in the following areas provided a basis for response to the sunset factors:

- Division of Licensing Services—Healthcare and Child Care Facility Licensing Fees (Auditor General Report No. 09-01).
- Division of Behavioral Health Services—Substance Abuse Treatment Programs (Auditor General Report No. 09-07).

This report also includes unaudited information obtained from department officials, department reports, the Department's Web site, the Governor's Regulatory Review Council, the Governor's Office, the Secretary of State's Office, and the AFIS *Accounting Event Transaction File* for fiscal years 2007 through 2009.

This audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Auditor General and staff express appreciation to the Department's Interim Director and staff for their cooperation and assistance throughout the review.

SUNSET FACTORS

In accordance with Arizona Revised Statutes (A.R.S.) §41-2954, the Legislature should consider the following 12 factors in determining whether the Department of Health Services (Department) should be continued or terminated. In two performance audits, the Auditor General identified areas in which the Department has operated efficiently and effectively, as well as opportunities for the Department to improve operations.

1. The objective and purpose in establishing the Department.

The Arizona Legislature established the Department in 1973 by consolidating the State Department of Health, the Arizona Health Planning Authority, Crippled Children Services, the Arizona State Hospital, and the Anatomy Board into a single department with various responsibilities. According to A.R.S. §36-101, the Legislature intended that the Department would provide or promote the following activities:

- Quality healthcare, in coordination with the private sector of health providers, to the citizens of this State;
- Cost-control mechanisms that will insure that the costs of healthcare to the citizens of this State are justified and equitable;
- Control of the quantity and quality of healthcare facilities within the State;
- Necessary health services for medically dependent citizens of this State;
- Essential healthcare services, including but not limited to, emergency medicine, preventive medicine, mental, maternal, and medical rehabilitation;
- Comprehensive and continuing planning, including assessment, identification and publication of health needs in this State; and
- Compliance with standards in licensing of health facilities.

The purpose in establishing the Department was to integrate health services to the people of Arizona in a pattern that would reduce duplicated administrative efforts, services, and expenditures through planning and coordination.

2. The effectiveness with which the Department has met its objective and purpose and the efficiency with which it has operated.

The Department has taken actions to meet its overall objective and purpose through several of its functions, although two performance audits identified several ways the Department could improve its effectiveness (see Report Nos. 09-01 and 09-07). Actions the Department reported taking to meet its objective and purpose include implementing a complaint-tracking system that allows citizens to access disciplinary and enforcement actions the Department takes against state-certified Emergency Medical Technicians.

The Department also reported that since July 2008, all deaths in Arizona are registered electronically since it developed and integrated a Web-based death registration system with a customer service system. The system facilitates on-line collaboration among death registration system users, including funeral homes, hospitals, nursing homes, physicians, medical examiners, and local and state registrars. It also reduces errors and fraud by verifying social security numbers and using electronic authentication, and it reduces the time in which families are able to obtain certified copies of death certificates.

The Department has also created a bureau of contract compliance within the Division of Behavioral Health Services to centralize contract compliance monitoring and oversight, although auditors found that it should take additional steps to improve its oversight of its substance abuse program (see below). In addition, in 2007, the Department took steps to address nursing staff turnover at the Arizona State Hospital by initiating pay increases for each level of experience, and by adding pay levels for nurses with over 5 years of experience. The Department reported that these changes resulted in nursing staff vacancies decreasing from 31 percent vacancies in fiscal year 2006 to 6.8 percent vacancies in fiscal year 2008. Further, in 2008, the Department developed a plan, in collaboration with over 25 local, state, federal, and nongovernmental organizations, to minimize the impact of an influenza pandemic on the public.

Auditors found that the Department should make improvements within its Division of Licensing Services regarding healthcare and child care facility licensing fees (see Report No. 09-01). The Department should develop or adopt a structured approach to evaluate its current licensing fees for healthcare and child care facilities, evaluate the current fees, and propose new fees to the Legislature that would cover more, if not all, of its regulatory costs, resulting in the more efficient use of state monies. As of fiscal year 2008, fees only covered 10 percent of regulatory costs. In addition, the Department should develop and

The Department should increase licensing fees to cover regulatory costs.

implement policies and procedures for using the approach to periodically reassess revenues, costs, and program outcomes to update fees as needed. The Department reported that, as of July 2009, it has developed a cost-based structured approach to evaluate the current licensing fees for healthcare and child care facilities. On September 4, 2009, the Governor signed House Bill 2013, which gives the Department the authority to establish and collect licensing fees for healthcare and child care facilities. The Department reported that it has taken measures to ensure that the cost of providing the licenses is as low as possible, and has taken into consideration the effect of increasing the licensing fees on healthcare and child care facilities.

Further, auditors found that the Department can improve the effectiveness of its substance abuse treatment programs (see Report No. 09-07). Arizona, like many other states, struggles with the problem of treating individuals with substance abuse problems. The Division of Behavioral Health Services should work to improve the outcomes for individuals participating in substance abuse treatment by helping to ensure that consumers complete their treatment, ensuring that consumers have access to a full range of services that can potentially be used to address their particular needs, and by following practices that have been shown to carry the greatest chance of success. The audit found that although consumers who completed the treatment program were more likely to improve, most consumers showed little change after treatment. Additionally, the Division of Behavioral Health Services should take steps to improve its oversight of the substance abuse programs administered by the RBHAs by increasing the use of information about treatment outcomes in order to determine if its substance abuse treatment programs are achieving positive results and if its resources are being used effectively. Further, it should improve its ability to manage costs by expanding its utilization reviews to focus on service costs, consumer assessments, and case management.

The Department can take steps to improve its substance abuse treatment programs.

3. The extent to which the Department has operated within the public interest.

The Department has operated within the public interest by developing, coordinating, monitoring, and providing healthcare and health-related activities. For example, the Department's Division of Licensing Services protects the health and safety of Arizonans that use child and healthcare facilities by licensing and certifying facilities, establishing rules to regulate these facilities, and conducting inspections to ensure compliance. It is also responsible for special licensing of healthcare-related professionals, such as nonnurse midwives, and for group homes for people with developmental disabilities. Further, it provides technical assistance and training to providers and caregivers, and information to consumers. The Division of Licensing Services tracks the timeliness of initial licensing, renewals, and license changes for assisted-living, medical, long-term care, and child care facilities, and reports the information to the Governor's Regulatory Review Council. According to a division report, in

The Department ensures that behavioral health services are available and accessible throughout the State.

fiscal year 2008, 71 percent of assisted-living facility licenses were issued in a timely manner, compared to 98 percent of medical facility licenses and 100 percent of long-term care facility licenses. For renewals, 68 percent of assisted-living facility licenses, 84 percent of medical facility licenses, and 55 percent of long-term care facility licenses were renewed in a timely manner. Finally, over 99 percent of initial licenses and renewals for child care facilities and group homes were issued in a timely manner.

The Department's Division of Behavioral Health Services has operated within the public interest to ensure that behavioral health services are available and accessible throughout Arizona by coordinating, planning, administering, regulating, and monitoring all facets of the public behavioral health prevention and treatment systems, managed through its contracts with the RBHAs. It also oversees the specialized psychiatric services provided at the Arizona State Hospital to the most severely mentally disabled patients, including those referred by court order. The Department reported several major accomplishments that occurred within this division since its last sunset review, as follows:

- The Child and Family Team best practices were implemented for children with behavioral health conditions and their families. In Child and Family Teams, a group consisting of the child, his/her family, a behavioral health representative, and other individuals who are important in the child's life, such as teachers and clergy, is formed to help the child attain the behavioral health objectives set for him/her.
- A Peer Support network was developed for persons with serious mental illness. It includes 14 community service agencies offering peer support services, five of which are peer-operated agencies in Maricopa County, providing services at 33 sites.
- The Division of Behavioral Health Service's permanent housing acquisition program was established in August 2000 using funds from a one-time appropriation of approximately \$42 million for housing, intensive case management, and rehabilitation/support services to the seriously mentally ill. This program has allowed the RBHAs to purchase homes and apartment complexes as permanent housing for people with serious mental illness. According to a department report, available housing for people with a serious mental illness in Maricopa County increased 64 percent from 1999 to 2008. Further, the report indicated that the number of people with a serious mental illness living in safe, affordable housing in Maricopa County increased from 3,688 persons in 1999, to 6,513 persons in 2008, or 77 percent.

- The Arizona State Hospital has been accredited without requirements for improvement since May 2003 by the Joint Commission, a nonprofit organization that accredits and certifies healthcare organizations. At the time of the last sunset review in 1999, the hospital's status was Accreditation with Requirements for Improvement.

The Department's Division of Public Health Services has operated within the public interest to ensure public safety through public health policy and leadership, public health preparedness services, and disease prevention services. Its programs collect, analyze, and disseminate public health data. In addition, the Division of Public Health Services builds and protects public health infrastructures to detect and control infectious and environmental threats and enhance the ability to respond to emergencies. For example, it works with state-wide public, private, and nonprofit entities, including county health departments, tribes, hospitals, mobile medical response, clinics, and emergency services to develop integrated action plans for emergency situations such as pandemic influenza, chemical spills, wildfires, and flooding. Further, its programs improve health outcomes by helping to prevent disease, reduce disability, and increase access to care. According to the Department, its successful activities and programs include:

- Newborn Screening in the State Laboratory, which expanded its testing capabilities from 14 disorders to 28 disorders.
- Screening of 781,686 children in 2,688 schools during the 2007-2008 school year, which identified nearly 1,600 children with hearing loss.
- The Arizona State Loan Repayment Program that repays medical student loans in exchange for providing primary care and dental services in medically underserved areas, resulting in approximately 52,000 primary care visits being provided by 27 providers at 25 sites from mid-2008 to mid-2009.

4. The extent to which rules adopted by the Department are consistent with the legislative mandate.

The Department derives its general authority to promulgate rules from A.R.S. §36-136(A)(4). The General Counsel for the Auditor General has reviewed analyses of the Department's rulemaking statutes by the Governor's Regulatory Review Council (Council) staff, performed at auditors' request, and finds that the Department has generally adopted rules consistent with legislative mandate or is in the process of amending rules where necessary. However, the General Counsel agrees with the Department that it has not fully established all rules required by A.R.S. §36-204 for the Arizona State Hospital. The Department attributes its inability to promulgate all the rules to its difficulty in meeting

established due dates for the many 5-year review reports that it must submit to the Council, as required by statute.¹ According to the Department, it has submitted more than 70 5-year review reports since 1999, in addition to submitting the required progress reports on the status of commitments made in the reports. As established by A.R.S. §41-1005, the Department reported that it also periodically makes exempt rules, which are not subject to the review process. Examples include Emergency Medical Services rules for protocol for medical treatments and procedures, and the rules that prohibit smoking in public places and places of employment.

As a result of a rulemaking moratorium issued by the Governor's Office for the period January 22 to October 16, 2009, the Department has suspended its rulemaking activities. When the moratorium was established, the Department was in the process of adopting new rules and/or revising rules related to several areas, including:

- **A.R.S. §§36-882, 36-883, 36-897.01, and 36-897.02**—Requiring the licensing and regulating of child care facilities and group homes;
 - **A.R.S. §36-1902**—Permitting the licensing and regulating of hearing aid dispensers; and
 - **A.R.S. §36-721**—Requiring the control of tuberculosis.
5. **The extent to which the Department has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

The Department uses its Web site extensively to inform the public of its rulemaking activities. The Web site includes rule drafts and revisions made to the drafts, the timeline for each rulemaking in process, and a "Frequently Asked Questions" section with information such as how the public can propose rules and provide input on rulemaking. Additionally, the Web site contains links to notices of dates and locations of hearings being held to obtain public comment. Further, the Department uses mailings, faxes, e-mails, and a newsletter to inform the public and stakeholders, such as local health officials and associations, of specific rulemaking. It also uses press releases to inform the public of rulemaking, rule provisions, public hearings, and a call center to answer questions on rulemaking. Finally, the Department educates and solicits input from those affected by proposed rules and rule changes by holding meetings with stakeholders and by conducting surveys.

¹ A.R.S. §41-1056 establishes that all agency rules must be reviewed at least every 5 years, and a review report be submitted to the Council. If the agency cannot meet an established deadline, it may file for an extension. If it does not meet the extension date, the rules expire and cannot be enforced until the Council completes and approves the review.

6. **The extent to which the Department has been able to investigate and resolve complaints that are within its jurisdiction.**

The Department has statutory authority to investigate and resolve complaints in various areas. The Division of Licensing Services receives complaints and investigates specific allegations of noncompliance with laws and rules against licensed healthcare and child care providers and facilities, and it received more than 3,000 complaints about those facilities in fiscal year 2009. The Division of Licensing Services has the ability to fine licensees, and to deny, revoke, and suspend licenses. However, its Office of Medical Facilities Licensing has had difficulty responding to complaints in a timely manner. Specifically, for fiscal year 2009, a monthly average of only 23 percent of its moderate-level complaint investigations were initiated within the required 10 days, and a monthly average of only 8 percent of its low-level complaint investigations were initiated within the required 45 days. The Department reported several factors that have made timely response to complaints for licensed medical facilities difficult. Specifically, from fiscal years 2003 to 2009, the number of licensed facilities increased 49 percent, and the number of complaints received increased 48 percent. In addition, the average monthly investigating staff vacancies for fiscal year 2009 was 17 percent.

The number of licensed medical facilities and complaints against the facilities have both increased in recent years.

Complaints expressing dissatisfaction with any aspect of care under the responsibility of the Division of Behavioral Health Services can be filed with the division or with the RBHAs. Complaints may come from various sources such as consumers, family members, providers, and government entities. Complaints regarding disagreements on an action, which is a decision by the RBHA denying or making a change to the services provided to the client, are resolved as "appeals." Complaints of alleged rights violations of persons with a serious mental illness are investigated by the RBHAs. The Division of Behavioral Health Services, however, directly investigates allegations of the most serious grievances, client abuse, and death cases concerning persons with serious mental illness, and ensures that investigation and resolution of quality of care concerns are documented in a database and used by its quality management area for quality of care tracking and oversight. Both the Division and the RBHAs have the ability to issue corrective actions, sanctions, and other contractual remedies. This process is also followed by the Arizona State Hospital. The Children's Rehabilitative Services Administration requires its contractors to investigate, resolve, and track all quality of care concerns, including service provision, rights violations, and consumer safety issues.

In the Division of Behavioral Health Services, complaint data for both adults and children is collected and tracked for compliance by quality management staff, and according to the Department, it is used to identify systemic issues requiring corrective action. Complaints are tracked by complaint category, such as "access to services," and by subcategories, such as "no provider to meet

needs” or “timeliness.” Complaints are also tracked according to the RBHA that provided the service. Appeals are tracked by RBHA; by the consumer’s program, such as the seriously mentally ill adult program or the children’s program; by the issue being appealed, such as denial of service or of claim payment; and by the outcome of the appeal. For the first quarter of fiscal year 2009, division reports indicated that for 105,110 adults and children receiving federally funded services through RBHAs state-wide, 1,186 complaints were filed, for a rate of 11.3 complaints per 1,000 consumers. For the second, third, and fourth quarters of fiscal year 2009, the reported rates were 10.2, 7.8, and 8.2 complaints per 1,000 consumers, respectively. RBHAs must resolve complaints within 90 days of complaint receipt. Division reports for fiscal year 2009 indicated that an average of 75 percent of complaints reported during each 90-day time frame were resolved during the 90-day time frame. This review found that the Division of Behavioral Health Services does not track the percent of complaints that are resolved within 90 days. According to the Department, it is looking into why it could not determine how many complaints meet the required time frame for resolution.

7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

The Attorney General and the County Attorneys have authority to prosecute unlawful actions under the Department’s enabling legislation. According to department officials, depending on the type of unlawful action that has occurred, the appropriate division contacts the responsible prosecuting entity, and the matter is then pursued by that entity. For example, the Division of Licensing Services may, with assistance from the Attorney General’s Office, refer a legal action related to a long-term care facility to the County Attorney in the county in which the facility is located.

8. The extent to which the Department has addressed deficiencies in its enabling statutes, which prevent it from fulfilling its statutory mandate.

The Department has requested or supported several bills to address statutory deficiencies. For example:

- Laws 2008, Chapter 66, allows healthcare institution and child care facility licensing applications to be submitted electronically, and no longer requires the Department to conduct an inspection of the facilities before renewing the license. According to the Department, before this statute change, shortages in inspection staff resulted in delayed license issuances that caused providers not to be reimbursed by insurance companies for services and required the Department to refund licensing fees.

- Laws 2008, Chapter 270, eliminates or modifies several outdated definitions within licensing statutes related to healthcare institutions. According to the Department, this change permits it to complete several rule-makings that will enhance its ability to protect the health and safety of patients. For example, prior to this law change, the definition of outpatient surgical centers did not include providing the pre-surgery care that these facilities now provide, resulting in the facilities having to be licensed to provide treatment and also licensed to perform surgery. Because of the elimination of the definition of outpatient surgical centers, the Department plans to adopt rules establishing standards for all services done on an outpatient basis. Facilities will be required to meet the standard for a service before being authorized to provide the service. They will receive one license that lists all services they have been authorized by the Department to provide. As a result, facilities will have more flexibility in the services they can provide, and the Department will be able to ensure that facilities meet standards in service provision to enhance patient protection.
 - Laws 2008, Chapter 203, allows the Department and employees of the Arizona State Hospital to petition the court for an order authorizing the testing of a patient's blood for diseases if the patient allegedly assaulted an employee at the hospital.
 - Laws 2008, Chapter 52, allows the Department and the Department of Economic Security to use the Department's database containing information on children with chronic diseases to notify the families of children with birth defects about services available to them. It also requires the Department to authorize other entities to distribute folic acid supplements and provide other pre-natal related services.
9. **The extent to which changes are necessary in the laws of the Department to adequately comply with the factors in the sunset law.**

Auditors' review of the Department's licensing services (Report No. 09-01) found that Arizona's licensing fees are outdated and not based on relevant cost factors. On September 4, 2009, the Governor signed House Bill 2013, which gives the Department the authority to establish and collect licensing fees for healthcare and child care facilities.

10. **The extent to which the termination of the Department would significantly harm the public's health, safety, or welfare.**

The need for healthcare licensing, regulation, monitoring, and education is well-established, as state agencies oversee healthcare activities nation-wide. If the Department were terminated, other state agencies and local governments would need to assume the Department's functions to ensure public health, safety, and welfare. Each of the Department's divisions is instrumental in providing healthcare-related services, specifically:

The Department oversees a system that provides behavioral health services to adults and children, and it operates the Arizona State Hospital.

- As of June 2009, the Division of Licensing Services licensed over 7,000 healthcare and child care facilities, including hospitals, nursing homes, child care centers, and group homes. Its administrative rules, inspections, and complaint investigations hold service providers to standards to ensure the health, safety, and welfare of consumers within the facilities.
- The Division of Behavioral Health Services oversees a managed behavioral health system that provided services to 157,744 consumers in fiscal year 2009. Its responsibilities include providing mental health services, including services for children and for adults with serious mental illness; ensuring compliance with federal requirements and court orders; and administering state and federal monies. This division also operates the Arizona State Hospital.
- The Division of Public Health Services helps to ensure public health, safety, and welfare in several areas, including ensuring that there is ambulance service throughout the State, that disease outbreaks are investigated, that the public is immunized, and that food is handled safely. Additionally, this Division provides state-wide coordination of disaster, disease outbreak, and bioterrorism preparedness and response, as well as birth and death certificates for Arizonans.

11. The extent to which the level of regulation exercised by the Department is appropriate and whether less or more stringent levels of regulation would be appropriate.

Audit work suggests that the Department's regulation of healthcare and child care facilities is appropriate. However the Department supported legislation in 2008 that reduced regulation by its Division of Public Health Services. The legislation exempted from regulation food and drink that is not hazardous and is prepared in a private home for occasional sale or distribution for noncommercial purposes, such as bake sales. Nonhazardous foods such as whole fruits and vegetables prepared and offered at child care facilities and locations selling small amounts of commercially prepackaged foods were also exempted. According to the Department, prior to these exemptions, existing statutes required the Department to prohibit food preparation in child care facilities, and in private homes when the food was intended for sale or distribution.

12. The extent to which the Department has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

The Department uses private contractors extensively within each of its divisions. For example, department administration uses private sector contracts for chemical waste disposal in the state laboratory, for defibrillator machines and compressed gases, and for information technology services such as Web site hosting and database administration. The Division of Behavioral Health Services received nearly \$1.2 billion in funding in fiscal year 2008 to procure services, allocating over \$989 million of that funding to its contracted RBHAs to provide mental health and substance abuse treatment and services. In addition, its Children's Rehabilitative Services program contracts for specialty care to children with chronic and disabling conditions. Finally, the Division of Public Health Services uses private contractors to ensure that those participating in its Women, Infants, and Children nutrition programs can get the authorized foods, and to provide supplies and equipment for newborn screening and testing.

The Department uses private contractors for a variety of services such as chemical waste disposal and database administration.

AGENCY RESPONSE

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JANICE K. BREWER, GOVERNOR
WILL HUMBLE, INTERIM DIRECTOR

September 22, 2009

Debbie Davenport
Auditor General
2910 N. 44th Street, Suite 410
Phoenix, Arizona 85018

Dear Ms. Davenport,

Thank you for the opportunity to respond to the Sunset Review for the Arizona Department of Health Services (ADHS).

In addition to an analysis of the twelve sunset factors, this report is partially based on two performance audits; the Division of Behavioral Health Services - Substance Abuse Treatment Program #09-07 and the Division of Licensing Services – Healthcares and Child Care Facility Licensing Fees #09-01. The Auditor General's findings and recommendations for both audits were discussed and responded to separately. ADHS agreed to the findings and the recommendations will be implemented.

We greatly appreciated the opportunity to work with your staff on the audits and we value the insight and recommendations you have provided us.

Sincerely,

Will Humble
Interim Director
Arizona Department of Health Services

Performance Audit Division reports issued within the last 24 months

07-10	Department of Economic Security—Division of Child Support Enforcement	09-01	Department of Health Services, Division of Licensing Services—Healthcare and Child Care Facility Licensing Fees
07-11	Arizona Supreme Court, Administrative Office of the Courts—Juvenile Detention Centers	09-02	Arizona Department of Juvenile Corrections—Rehabilitation and Community Re-entry Programs
07-12	Department of Environmental Quality—Vehicle Emissions Inspection Programs	09-03	Maricopa County Special Health Care District
07-13	Arizona Supreme Court, Administrative Office of the Courts—Juvenile Treatment Programs	09-04	Arizona Sports and Tourism Authority
08-01	Electric Competition	09-05	State Compensation Fund
08-02	Arizona’s Universities—Technology Transfer Programs	09-06	Gila County Transportation Excise Tax
08-03	Arizona’s Universities—Capital Project Financing	09-07	Department of Health Services, Division of Behavioral Health Services—Substance Abuse Treatment Programs
08-04	Arizona’s Universities—Information Technology Security	09-08	Arizona Department of Liquor Licenses and Control
08-05	Arizona Biomedical Research Commission	09-09	Arizona Department of Juvenile Corrections—Suicide Prevention and Violence and Abuse Reduction Efforts
08-06	Board of Podiatry Examiners	09-10	Arizona Department of Juvenile Corrections—Sunset Factors

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